

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

CURTIS BAILEY; MICHAEL BELL; STACI  
BRITTON; JAMES C. BROWN, III; WENDEE  
CLEVERINGA; RICHARD DANIEL;  
STEPHANIE DANIEL; SUZANNE DICKSON;  
THOMAS HYDE; BRENNEN LANG; TAMARA  
LUKES; JENNIFER RUSSELL; J.R., by and  
through his Guardian Ad Litem, Jennifer Russell;  
K.R., by and through his Guardian Ad Litem,  
Jennifer Russell; L.R., by and through her Guardian  
Ad Litem, Jennifer Russell; TABITHA THURSTON;  
K.T., by and through her Guardian Ad Litem, Tabitha  
Thurston; and Z.T., by and through his Guardian Ad  
Litem, Tabitha Thurston

Plaintiffs,

v.

POLYGON NORTHWEST COMPANY, LLC;  
POLYGON NORTHWEST COMPANY; TAYLOR  
MORRISON NORTHWEST, LLC; and WILLIAM  
LYON HOMES, INC.,

Defendants.

No. 3:22-cv-292-YY

ORDER

HERNÁNDEZ, District Judge:

Magistrate Judge You issued a Findings and Recommendation on August 23, 2022, in which she recommends that this Court grant in part and deny in part Defendants' motion to dismiss. F&R, ECF 19. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

Both Plaintiffs and Defendants filed timely objections to the Magistrate Judge's Findings and Recommendation. Pl. Obj., ECF 21; Def. Obj., ECF 22. When any party objects to any portion of the Magistrate Judge's Findings & Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

The Court has carefully considered Plaintiffs' and Defendants' objections and has reviewed the pertinent portions of the record *de novo*. The Court makes the following corrections to the F&R:

1. The Court finds that only Plaintiffs Brown and Bell (rather than Bailey) are eligible to recover damages for emotional distress on their negligence claims and may proceed with their claims for negligent infliction of emotional distress. *See* F&R 12, 20.
2. For Plaintiffs other than Brown and Bell, the Court finds that the circumstances giving rise to their claims are similar to the plaintiffs in *Meyer v. 4-D Insulation Co., Inc.*, 60 Or. App. 70, 652 P.2d 852 (1982) rather than the plaintiff in *Macca v. General Telephone Co. of the Northwest, Inc.*, 262 Or. 414, 495 P.2d 1193 (1972). *See* F&R 17.


Otherwise, the Court finds no error and concludes that there is no basis to modify the Magistrate Judge's Findings & Recommendation.

### CONCLUSION

The Court ADOPTS Magistrate Judge You's Findings and Recommendation [19]. Therefore, Defendants' Motion to Dismiss and Motion for a More Definite Statement [10] is GRANTED in part and DENIED in part. Defendants' motion is granted as to Plaintiff's private nuisance claims. Except for claims brought by Plaintiffs Bell and Brown, Defendants' motion is also granted as to claims for negligent infliction of emotional distress and for all other claims seeking emotional distress damages. Otherwise, Defendants' motion is denied.

IT IS SO ORDERED.

DATED: November 23, 2022.

  
MARCO A. HERNANDEZ  
United States District Judge